

REMARKS/ARGUMENTS

Entry of the foregoing Amendment is respectfully requested. Claims 11, 12, 14-27, and 29-32 are currently pending in the instant patent application. With this response, Applicant's instantly claimed invention is directed to a method of producing a tablet including live bacteria comprising the steps: (a) mixing at least one strain of said live bacteria with at least one fructose oligosaccharide to form a mixture and (b) compressing said mixture so as to form a tablet having a friability of between 0.1 and 1.0 while maintaining at least about 60% viability of said bacteria following the compression.

The examiner appears to assert that in order for Applicant to have the proper written description for the instantly claimed invention, he must have made all of the numerous possible tablets, each with a different friability, within the 0.1 to 1.0 range of friabilities. Applicant respectfully submits that this is not the law for written description. For all of the reasons stated herein, Applicant submits that there is sufficient written description for the instantly claimed invention.

Applicant respectfully submits that the specification provides the necessary antecedent basis for the amended claims. For example, as of the filing date of the instant invention, Applicant was in possession of a method of providing at least 60% viability of bacteria following compression of the ingredients into tablets, while maintaining friability between 0.1 and 1.0. The specification on page 3, lines 22-32 recites as follows:

Due to this new composition, the punching pressure for the tablet making maybe reduced by up to 50% compared to conventional tablet punching methods without any reduction of the friability. This friability according to the invention will be 0.3-0.5, which is to be compared with the reference values which are accepted according to GMP (Good Manufacturing Practice) which are within the range of 0.1-1.0.

The amended claimed step of compressing the mixture of live bacteria with at least one fructose oligosaccharide so as to form a tablet having a friability of between 0.1 and 1.0 while maintaining at least about 60% viability of said bacteria following the compression, is fully supported by the specification. For instance, the example cited in the specification teaches that when the claimed tablet ingredients are placed in a tablet punching machine tablets are formed having 60% viability of the bacteria and a friability of between 0.1 to 1.0. (See specification, Example 1, page 4, lines 21-34).

Applicant further submits that the amended claim phrase "compressing the mixture of live bacteria with at least one fructose oligosaccharide so as to form a tablet" as described in claims 11, 12, 14-27, and 29-32 is properly defined by the specification. The tablets of the instantly claimed invention are formed on a "tablet punching machine." (see page 1, lines 14-16). This tablet punching machine uses pressure to form tablets. (see page 1 lines 14-20). Thus the use of amended claim phrase "compressing the mixture of live bacteria with at least one fructose oligosaccharide so as to form a tablet" has proper antecedent basis from the specification.

In addition, Applicant submits that the sufficiency of "compressing the mixture of live bacteria with at least one fructose oligosaccharide so as to form a tablet" also contains a proper antecedent basis in the specification. "[T]he punching pressure for the tablet making maybe reduced by up to 50% compared to conventional tablet punching methods." (page 3, lines 22-24). One skilled in the art would know the "punching pressure" for "conventional tablet punching methods." Thus, presently amended claims 11, 12, 14-27, and 29-32 are fully supported by the specification.

Based on the foregoing, Applicant respectfully submits that claims 11, 12, 14-27, and 29-32 are in condition for allowance.

If however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By Gerard P. Norton
Gerard P. Norton
Registration No.: 36,621
LERNER, DAVID, LITTBENBERG,
KRUMLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

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